

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ SEP 13 2010 ★

----- X  
BROOKLYN OFFICE  
Civ Action No.:

\_\_\_\_\_, an infant by his  
Father and natural guardian, ORLANDO OJEDA,  
and ORLANDO OJEDA, Individually,

Plaintiffs,

- against -

THE HOME DEPOT USA., INC.,

Defendant.

**NOTICE OF REMOVAL**

IRIZARRY, J.

LEVY, M.J.

----- X  
To The Honorable Judges of The United States District Court for The Eastern District of New York:

Removing party, Home Depot U.S.A., Inc. ("Home Depot"), by its attorneys, D'Amato & Lynch, LLP, respectfully shows this Court:

1. Home Depot is the defendant in the above-entitled action.
2. On or about November 2, 2009, the above-entitled action was commenced against Home Depot by the filing of a summons and complaint in the Supreme Court of the State of New York, County of Kings, under Index No. 27754/09, and is now pending therein. A copy of the Summons and Complaint is annexed as Exhibit "A".
3. On our about November 13, 2009, Home Depot was served with a summons and complaint via the Secretary of State in the above-entitled action.

4. On or about December 30, 2009 Home Depot served its Answer to the Complaint with a Request for a Supplemental Demand. A copy of Home Depot's Answer and Supplemental Demand is annexed as Exhibit "B".

5. On or about August 16, 2010, Home Depot served a Notice To Admit. (See a copy of the Notice to Admit annexed as Exhibit "C").

6. On September 1, 2010, this office received a response to the Notice to Admit stating the damages being sought by plaintiffs exceed \$75,000.00. (See a copy of the response to the Notice to Admit annexed hereto as Exhibit "D").

7. Plaintiffs, by their own admission, are residents of the State of New York.

8. Home Depot is a corporation duly organized and existing pursuant to the laws of the State of Delaware, having its principal office in the State of Georgia.

9. The above-entitled action is a personal injury action to recover damages for injuries allegedly sustained by the plaintiff as a result of defendant's negligence, carelessness and recklessness was caused to suffer severe and serious personal injuries to mind and body while she was at the Home Depot store located at 550 Hamilton Avenue, Brooklyn, New York 11232, on September 22, 2007.

10. Plaintiff alleges that Home Depot was negligent in the maintenance of the Store thereby allowing a dangerous condition to exist resulting in personal injuries to plaintiff.

11. On June 24, 2010 a Preliminary Conference was held.

12. This Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. §1332, and the action may therefore be removed to this Court pursuant to 28 U.S.C. §1441(b).

13. This notice is timely filed pursuant to 28 U.S.C. §1446.

WHEREFORE, removing party Home Depot U.S.A., Inc. prays that the above-entitled action be removed from the Supreme Court of the State of New York, County of Kings to this Court.

Dated: New York, New York  
September 8, 2010

D'AMATO & LYNCH, LLP

By: Megan Marchick Le  
MEGAN MARCHICK LE  
Attorneys for Defendant  
HOME DEPOT U.S.A., INC.  
Two World Financial Center  
New York, New York 10281  
(212) 269-0927  
**Our File No.: 434-76207**



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

\_\_\_\_\_, an infant by his father  
and natural guardian, ORLANDO OJEDA, and  
ORLANDO OJEDA, Individually,  
Plaintiffs,

-against-

HOME DEPOT U.S.A., INC.,

Defendant,

Date Filed: 11/2/2009

Index No.: 27754/2009

Plaintiff designates KINGS  
COUNTY as the place of trial

The basis of Venue is  
Plaintiffs' Residence

**SUMMONS**

Plaintiffs reside at

\_\_\_\_\_  
Brooklyn, New York

To The Above Named Defendants:

**YOU ARE HEREBY SUMMONED** to answer the Verified Complaint in this action and to serve a copy of your Answer, or, if the Verified Complaint is not served with this Summons, to serve a Notice of Appearance, on the Plaintiff's Attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York; and in the case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York  
October 26, 2009

**ANDREW L. WEITZ & ASSOCIATES, P.C.**

Attorneys for Plaintiffs

By: Andrew L. Weitz

**ANDREW L. WEITZ, ESQ.**

233 Broadway, Suite 840

New York, New York 10279

(212) 553-9300

**DEFENDANT'S ADDRESS:**  
**HOME DEPOT U.S.A., INC.**  
**2455 PACES FERRY ROAD NW**  
**ATLANTA, GEORGIA 30339-4053**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
[REDACTED] an infant by his father  
and natural guardian ORLANDO OJEDA, and  
ORLANDO OJEDA, Individually

Plaintiffs,

-against-

HOME DEPOT U.S.A., INC.,

Defendant,  
-----X

Index No. 27754/2009

COMPLAINT  
**DATE FILED** 11/2/2009

Plaintiffs, by their attorneys, **ANDREW L. WEITZ & ASSOCIATES, P.C.**, as and for a  
Verified Complaint herein, respectfully set forth and allege:

**AS AND FOR A FIRST CAUSE OF ACTION ON  
BEHALF OF PLAINTIFF ORLANDO DYLAN OJEDA:**

1. That at all times hereinafter mentioned, the plaintiffs were and still are residents of the County of Kings, City and State of New York.
2. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, was a domestic corporation duly authorized to conduct business in the State of New York.
3. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, was a foreign corporation duly authorized to conduct business in the State of New York.
4. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, was a corporation doing business in the State of New York.
5. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, owned a certain place of business designated as Home Depot Store #1225, located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York.

6. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees operated said place of business designated as Home Depot Store #1225, located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York.

7. That at all times hereinafter mentioned, the defendant, **THE HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees maintained said place of business designated as Home Depot Store #1225, located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York.

8. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees managed said place of business designated as Home Depot Store #1225, located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York.

9. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees controlled said place of business designated as Home Depot Store #1225, located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York.

10. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees supervised said place of business designated as Home Depot Store #1225, located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York.

11. That at all times hereinafter mentioned the defendant, **HOME DEPOT U.S.A., INC.**, engaged in business as a retail store, and invited the general public, including the plaintiffs, to patronize its said place of business.

12. That at all times hereinafter mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, displayed for sale to the general public, various merchandise, including certain doors, among other things, which the said defendant, invited the general public, and the plaintiff herein to purchase.

13. That at all times hereinafter mentioned, it was the duty of the defendant **HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees to provide for the safety, protection, supervision and well-being of persons who were lawful patrons upon the premises and/or place of business of said department store located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York.

14. That at all times hereinafter mentioned, it was the duty of the defendant **HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees to maintain the premises and/or place of business located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York, in reasonably safe and suitable condition, so as to protect the general public and the plaintiffs herein from unsecured merchandise falling on them.

15. That at all times herein mentioned, it was the duty of the defendant, its servants, agents and/or employees to ensure that all merchandise, including doors, to be appropriately displayed, secured and fastened so that the general public, and more specifically the plaintiff herein could walk in the aisles and be safe and protected.

16. That on September 22, 2007 at approximately 12:00 p.m., the infant plaintiff [REDACTED] and his father **ORLANDO OJEDA** were lawfully present upon the premises and/or place of business of the defendant located at 550 Hamilton Avenue, Brooklyn, County of Kings, City and State of New York, for the purpose of purchasing merchandise.



17. That on September 22, 2007, at approximately 12:00 p.m., the plaintiffs were lawfully walking upon the premises and/or place of business of the defendant, specifically in the aisle where doors were displayed when the infant plaintiff was struck by a door that was negligently and improperly placed against the display area, causing serious bodily injuries to the infant plaintiff.

18. That the door was placed in an unsafe, inappropriate and dangerous manner, allowing the existence of a dangerous and hazardous condition for the general public and more specifically the plaintiffs herein.

19. That at all times herein mentioned, the defendant, **HOME DEPOT U.S.A., INC.**, its servants, agents and/or employees failed to ensure that the door was properly and adequately placed and secured so as to protect the general public and the plaintiffs herein.

20. That at all times herein mentioned, the defendant, its servants, agents and/or employees failed to place barriers or signs to warn the general public and the plaintiffs herein walking in the aisle as to the hazard and danger existing thereof.

21. That by reason of the negligence of the defendant **THE HOME DEPOT U.S.S., INC.**, its servants, agents and/or employees the infant plaintiff [REDACTED] was caused to sustain serious bodily injuries, including but not limited to the head, neck and face.

22. That the foregoing occurrence and the injuries to the infant plaintiff were caused solely by reason of the carelessness and negligence of the defendant and without any negligence on the part of the plaintiff contributing thereto.

23. That this action falls within one or more of the exceptions set forth in CPLR 1602.

24. Pursuant to CPLR Section 1602(2)(iv), defendant is jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendant owed the plaintiff a non-

delegable duty of care.

25 Pursuant to CPLR Section 1602(7), defendant is jointly and severally liable for all of plaintiff's damages, including but not limited to plaintiff's non-economic loss, irrespective of the provisions of the CPLR Section 1601, by reason of the fact that defendant acted with reckless disregard of the safety of others.

26. That by reason of the foregoing, this infant plaintiff was severely injured and damaged, rendered sick, sore, lame and disabled, sustained severe nervous shock and mental anguish, great physical pain and emotional upset, some of which injuries are permanent in nature and duration, and infant plaintiff will be permanently caused to suffer pain, inconvenience and other effects of such injuries; infant plaintiff incurred and in the future will necessarily incur further hospital and/or medical expenses in an effort to be cured of said injuries; and infant plaintiff has suffered and in the future will necessarily suffer additional loss; and infant plaintiff will be unable to pursue the usual duties with the same degree of efficiency as prior to this accident, all to infant plaintiff's great damage.

27. That by reason of the foregoing, this plaintiff has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

**AS AND FOR A SECOND CAUSE OF ACTION ON  
BEHALF OF PLAINTIFF ORLANDO QJEDA:**

28. That plaintiff repeats, reiterates and realleges each and every allegation as contained in paragraphs "1" to "25" of the within Complaint, with the same force and effect as though each were more fully set forth at length herein.

29. That at all times herein mentioned this plaintiff **ORLANDO OJEDA** is the father and natural guardian of the infant plaintiff [REDACTED] and as such is entitled to the services, society and companionship of the said infant plaintiff.

30. That as a result of the foregoing accident and the resulting injuries to the infant plaintiff, this plaintiff **ORLANDO OJEDA** has been required to expend various sums of money for the medical care, consultation, advice and treatment of the infant plaintiff, and has suffered other indemnifiable economic losses and has been deprived of the services, society and companionship of the infant plaintiff.

31. That by reason of the foregoing this plaintiff has been damaged in an amount which exceeds the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in an amount to be determined upon the trial of this action.

**WHEREFORE**, plaintiffs demand judgment against the defendant in all causes of action, in amounts which exceed the monetary jurisdictional limits of any and all lower Courts which would otherwise have jurisdiction herein, in amounts to be determined upon the trial of this action, together with the costs and disbursements of this action.

Dated: October 26, 2007  
New York, New York

Yours, etc.,

**ANDREW L. WEITZ & ASSOCIATES, P.C.**,  
Attorneys for Plaintiffs

By: 

**ANDREW L. WEITZ, ESQ.**  
233 Broadway Suite 840  
New York, New York 10279  
(212) 553-9300  
File No. 020187

**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK     )  
                                      ) SS:  
COUNTY OF NEW YORK    )

**ANDREW L. WEITZ**, an attorney duly admitted to practice before the Courts of this State, affirms the following to be true under the penalties of perjury:

I am a partner in the law firm of **ANDREW L. WEITZ & ASSOCIATES, P.C.**, attorneys for the plaintiff in the instant action; that I have read the foregoing Summons and Complaint and that the contents thereof are true to your affirmant's knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters your affirmant believes them to be true.

The reason this verification is made by affirmant and not by plaintiff is that the plaintiff is in a County other than the one in which plaintiff's attorneys maintain their office.

The source of affirmant's information and the grounds of my belief are communications, papers, reports and investigations contained in this file.

Dated: New York, New York  
October 26, 2009

  
**ANDREW L. WEITZ**

Index Number: \_\_\_\_\_

**SUPREME COURT OF THE STATE OF NEW YORK :  
COUNTY OF KINGS**

\_\_\_\_\_, an infant by his father  
and natural guardian ORLANDO OJEDA, and  
ORLANDO OJEDA, Individually

Plaintiffs,

-against-

HOME DEPOT U.S.A., INC.,

Defendant,

**SUMMONS AND COMPLAINT**

**ANDREW L. WEITZ & ASSOCIATES, P.C.**

*Attorneys for Plaintiffs*

233 BROADWAY, SUITE 840  
NEW YORK, NEW YORK 10279-0003  
(212) 553-9300

*Service of copy of the within*

*is hereby admitted.*

Dated: New York, New York

\_\_\_\_\_  
*Attorneys for Plaintiff*

**ANDREW L. WEITZ & ASSOCIATES, P.C.**

*Attorneys for Plaintiffs*

233 BROADWAY, SUITE 840  
NEW YORK, NEW YORK 10279-0003  
(212) 553-9300

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US POSTAGE  
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11/13/2009  
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DEPARTMENT OF STATE  
UNIFORM COMMERCIAL CODE  
ONE COMMERCE PLAZA  
89 WASHINGTON AVENUE  
ALBANY, NY 12231-0001

C/O CORPORATION SERVICE COMPANY  
80 STATE STREET  
ALBANY, NY 12207-2543

CERTIFIED MAIL

Sender:

New York State Department of State  
99 Washington Avenue  
Albany, NY 12231

Receipt # 200911120143

COMPLETE THIS SECTION ON DELIVERY:

A. Signature: (Deduplicate or <input type="checkbox"/> Agent)	<input checked="" type="checkbox"/>
B. Received by: (Please Print Clearly)	
C. Date of Delivery	
D. Addressee's Address (If Collected From Address Used by Sender)	
Secondary Address ( Suite / Apt. / Floor (Please Print Clearly) )	
Delivery Address	
CITY	State ZIP + 4 Code

CERTIFIED MAIL



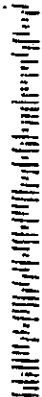
7111 5495 5563 1620 2652

RETURN RECEIPT REQUESTED

Article Addressed To:

HOME DEPOT U.S.A., INC.  
C/O CORPORATION SERVICE COMPANY  
80 STATE STREET  
ALBANY, NY 12207-2543

USPS Form 3800, 0706  
PS Form 3800, 0706  
USPS Form 3800, 0706  
USPS Form 3800, 0706





SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
[REDACTED], an infant by his  
father and natural guardian, ORLANDO OJEDA,  
and ORLANDO OJEDA, Individually

Index No.: 27754/09

**VERIFIED ANSWER**

Plaintiffs,

-against-

HOME DEPOT, USA INC.,

Defendant.

-----X

Defendant, HOME DEPOT U.S.A. INC., by its attorneys, D'AMATO & LYNCH, LLP,  
as and for its answer, alleges as follows:

1. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "1" of the Verified Complaint.
2. Denies the allegation set forth in paragraph "2" of the Verified Complaint.
3. Admits the allegation set forth in paragraph "3" of the Verified Complaint.
4. Admits the allegation set forth in paragraph "4" of the Verified Complaint.
5. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "5" of the Verified Complaint.
6. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "6" of the Verified Complaint.



7. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "7" of the Verified Complaint.

8. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "8" of the Verified Complaint and submits this is an issue for the Court to resolve.

9. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "9" of the Verified Complaint and submits this is an issue for the Court to resolve.

10. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "10" of the Verified Complaint and submits this is an issue for the Court to resolve.

11. Admit the allegation set forth in paragraph "11" of the Verified Complaint .

12. Admits the allegation set forth in paragraph "12" of the Verified Complaint.

13. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "13" of the Verified Complaint and submits this is an issue for the Court to resolve.

14. Denies information or knowledge sufficient to form a belief as to the truth of the allegation set forth in paragraph "14" of the Verified Complaint and submits this is an issue for the Court to resolve.

15. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "15" of the Verified Complaint and submits this is an issue for the Court to resolve.

16. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the Verified Complaint.

17. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "17" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

18. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "18" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

19. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "19" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

20. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "20" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

21. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

22. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

23. Denies information or knowledge sufficient to form a belief as to the truth of

the allegations set forth in paragraph "23" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

24. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "24" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

25. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the Verified Complaint and submits this is a legal issue solely to be determined by the Court.

26. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "26" of the Verified Complaint.

27. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "27" of the Verified Complaint.

#### **AS AND FOR A SECOND CAUSE OF ACTION**

28. Answering paragraph "28" of the Verified Complaint, the answering defendant repeats, reiterates and realleges each and every allegation, denial and denial upon information and belief as to each and every allegation alleged in the Verified Complaint at paragraphs designated "1" through "27", as if fully set forth herein at length.

29. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "29" of the Verified Complaint.

30. Denies information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph "30" of the Verified Complaint.

31. Denies information or knowledge sufficient to form a belief as to the truth of

the allegations set forth in paragraph "31" of the Verified Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

32. Upon information and belief, the culpable conduct and comparative and contributory negligence of plaintiff and others contributed to and caused the liability and damages alleged.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

33. Upon information and belief, if plaintiffs sustained any injuries or damages as alleged in the Verified Complaint, such injuries or damages were the result of the culpable conduct and/or assumption of risk by plaintiff. If found, however, that the answering defendant is liable to plaintiffs herein, which liability is specifically denied, then the answering defendant alleges that, if any damages are found, they are to be apportioned among the parties according to the degree of responsibility that each is found to have for the occurrence, in proportion to the entire measure of responsibility for the occurrence.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

34. Upon information and belief, plaintiffs failed to take any, or sufficient, action which was necessary to mitigate or minimize the damages allegedly sustained in this action.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

35. Upon information and belief, at all times relevant herein, plaintiff engaged in activity that plaintiff knew or should have known of the risks inherent in engaging in the dangerous, hazardous and threatening activities alleged in the Verified Complaint and hence assumed the risk of any injuries that may have been sustained as a result thereof.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

36. Upon information and belief, plaintiffs' claims for medical, dental and/or custodial care, rehabilitation services, loss of earnings or other economic loss are subject to the provisions of Section 4545(c) of the Civil Practice Law and Rules and any and all such past or future costs or expenses which were or will be replaced or indemnified, in whole or in part, from any collateral source are not recoverable in this action.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

37. Upon information and belief, the alleged injuries of plaintiffs, if any, were caused or contributed to, in whole or in part, by intervening and superseding causative factors and therefore the claims of plaintiffs against the answering defendant should be barred.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

38. Upon information and belief, this action should not proceed in the absence of any entities and persons who should be parties.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

39. Upon information and belief, plaintiffs has failed to state a cause of action upon which relief can be granted as against this defendant.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

40. The answering defendant not being fully advised as to all of the facts and circumstances surrounding the incident complained of herein, hereby asserts and reserves unto itself the defenses of accord and satisfaction, arbitration and award, discharge of bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, laches, license, payment, release, *res judicata*, Statute of Frauds, Statute of Limitations, waiver, and other matter constituting an avoidance or an affirmative defense which further investigation of this matter may prove applicable herein.

WHEREFORE, defendant HOME DEPOT U.S.A., INC. demands judgment dismissing the Complaint as to the answering defendant, together with costs and disbursements of this action awarded to said defendant.

Dated: New York, New York  
December 30, 2009

Yours, etc.,

D'AMATO & LYNCH, LLP

By: Megan Marchick  
Megan Marchick, Esq.  
Attorneys for Defendant  
HOME DEPOT U.S.A., INC.  
70 Pine Street  
New York, New York 10270  
(212) 269-0927  
Our File No.: 434-76207

TO: ANDREW L. WEITZ & ASSOCIATES, P.C.  
Attorneys for Plaintiff  
233 Broadway, Suite 840  
New York, New York 10279  
(212) 553-9300

ATTORNEY'S VERIFICATION

Megan Marchick, an attorney duly admitted to practice in the Courts of the State of New York, affirms the following under penalty of perjury, being duly sworn, deposes and says:

1. I am associated with the law firm of D'AMATO & LYNCH, LLP, the attorneys of record for defendant HOME DEPOT U.S.A., INC. in the within action.
2. I have read the foregoing VERIFIED ANSWER and know the contents thereof.
3. The same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and, as to those matters, I believe them to be true.
4. The reason this Verification is made by me and not by the defendant HOME DEPOT U.S.A., INC. is because said defendant is not within the county where I have my office.
5. The grounds for my belief as to all matters in the Verified Answer not stated to be upon my knowledge are based upon a review of the file and conversations with the client.

Megan Marchick  
Megan Marchick

Dated: New York, New York  
December 30, 2009

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

----- X  
[REDACTED] infant, by his father  
and natural guardian, Orlando Ojeda, and Orlando  
Ojeda, individually,  
Plaintiff,

Index No.: 27754/09

-against-

**REQUEST FOR  
SUPPLEMENTAL DEMAND**

HOME DEPOT, USA INC.,

Defendant.

----- X  
Pursuant to Section 3017(c) of the Civil Practice Law and Rules, within 15 days  
from the date of the service of this Demand, you are hereby required to set forth the total  
damages to which plaintiff deems herself entitled and list same separately for each cause of  
action or claim.

Dated: New York, New York  
December 30, 2009

Yours, etc.,

D'AMATO & LYNCH, LLP

By:

\_\_\_\_\_  
Megan Marchick, Esq.  
Attorneys for Defendant  
HOME DEPOT U.S.A., INC.  
70 Pine Street  
New York, New York 10270  
(212) 269-0927


TO: Andrew L. Weitz & Associates, P.C.  
Attorney for Plaintiff's Counsel  
233 Broadway, Suite 840  
New York, New York 10279  
(212)-553-9300





SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X

 an infant by his  
father and natural guardian, ORLANDO OJEDA,  
and ORLANDO OJEDA, Individually

**Index No.: 27754/09**

Plaintiffs,

**NOTICE TO ADMIT**

-against-

HOME DEPOT, USA INC.,

Defendant.

-----X

Defendant Home Depot U.S.A., Inc., by its attorneys, D'Amato & Lynch, LLP,  
hereby requests, pursuant to Section 3123 of the Civil Practice Law and Rules, that plaintiffs  
make the following admissions within 20 days after service hereof:

**REQUESTS FOR ADMISSIONS**

1. The monetary amount plaintiffs are seeking in the above captioned action exceeds  
\$75,000.

Please take further notice that each of the matters of which an admission is requested  
shall be deemed admitted unless within 20 days after service thereof, you serve upon the  
undersigned a sworn statement either denying specifically the matter of which an admission  
is requested or set forth in detail the reason why the matters cannot be truthfully admitted or  
denied.

Dated: New York, New York  
August 16, 2010

Yours, etc.,

D'AMATO & LYNCH, LLP

By: Megan Marchick Le  
Megan Marchick Le, Esq.

Attorneys for Defendant

HOME DEPOT U.S.A., INC.

Two World Financial Center

New York, New York 10281

(212) 269-0927

**Our File No.: 434-76207**

TO: ANDREW L. WEITZ & ASSOCIATES, P.C.  
Attorneys for Plaintiff  
233 Broadway, Suite 840  
New York, New York 10279  
(212) 553-9300





SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

-----X  
[REDACTED] an infant by his father  
and natural guardian, ORLANDO OJEDA, and  
ORLANDO OJEDA, Individually,  
Plaintiffs,

Index No. 27754/09

**RESPONSE TO  
DEFENDANT'S  
NOTICE TO ADMIT**

-against-

HOME DEPOT U.S.A., INC.,  
Defendant.  
-----X

Plaintiffs, by their attorneys, ANDREW L. WEITZ & ASSOCIATES, P.C., respond to  
defendant HOME DEPOT U.S.A., INC.'s Notice to Admit, dated August 16, 2010, as follows:

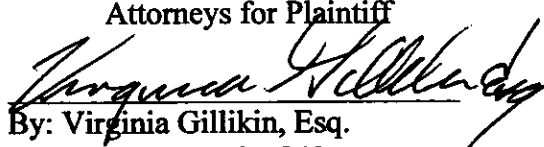
1. Admits that the monetary amount plaintiffs are seeking in the above captioned action  
exceeds \$75,000.

**PLEASE TAKE NOTICE**, that plaintiff reserves his right to supplement and/or amend this  
information up to and including the time of trial.

Dated: New York, New York  
August 25, 2010

Yours, etc.,

ANDREW L. WEITZ & ASSOCIATES, P.C.  
Attorneys for Plaintiff

  
By: Virginia Gillikin, Esq.  
233 Broadway Suite 840  
New York, New York 10279  
(212) 553-9300

TO: D'AMATO & LYNCH, LLP  
Attorneys for Defendant  
Home Depot, USA Inc.  
Two World Financial Center  
New York, New York 11281  
(212) 269-0927

{00019202;}